

September 7, 2001

Docket No. FMCSA-98-4334
Dockets Management Facility
Room PL-401
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Qualification of Drivers; Exemption Applications; Vision
66 FR 41656, Aug. 8, 2001

Advocates for Highway and Auto Safety (Advocates) files these comments regarding the Federal Motor Carrier Safety Administration's (FMCSA) notice announcing the agency's decision to grant renewal of six exemptions from the federal vision requirement, 49 Code of Federal Regulations 391.41(b)(10).

Advocates objects to the issuance of the FMCSA final decision as a *fait accompli* without providing prior notice and opportunity for public comment as required by 49 U.S.C. § 31315. The agency has summarily renewed the exemptions, effective August 8, 2001, without any opportunity for public input prior to the decision to renew. Renewals of exemptions should be subject to the same notice and comment process as required for the initial determination to grant the exemption. According to the statute, the agency is required to provide public notice and an opportunity for comment prior to making its determination to grant an exemption.

(4) Notice and comment.--

(A) Upon receipt of a request.—Upon receipt of an exemption request, the Secretary shall publish in the Federal Register a notice explaining the request that has been filed and shall give the public the opportunity to inspect the safety analysis and any other relevant information known to the Secretary and to comment on the request.

49 U.S.C. § 31315(4)(A). In this and other instances of drivers seeking a second two-year exemption from the federal vision requirement, the agency only provides an opportunity for public comment after the determination to grant the exemption has already been granted and made effective by the agency. This is a clear violation of the meaning and the purpose of the statute. Moreover, this procedure violates due process considerations and the dictates of the Administrative Procedure Act, 5 U.S.C. § 553 *et seq.*

Furthermore, the summary information provided regarding applications for a second two-year exemption does not afford the public an “opportunity to inspect the safety analysis and any other relevant information known to the Secretary.” *Id.* The agency notice provides only a summary statement that the applicants have provided sufficient information to qualify for a second exemption. The agency makes specific reference only to the fact that the vision

impairment of the applicants remain stable, and that an agency “review of their records of safety while driving with their respective deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards.” 66 FR 41656, 41657. The agency does not share this information or its analysis with the public, nor place these materials in the docket. No factual recitation is provided regarding the driving experience, crash and citation record of the applicants over the previous two-year exemption period, records that are certainly directly relevant to their application for a second two-year exemption. On the basis of this secret information, however, FMCSA unilaterally concludes that each applicant should be granted a second two-year exemption. *Id.*

Specifically, the agency does not present for public review any of the information the agency relied on in making its determination. Neither does the agency provide any follow up information similar to the information presented to the public in the initial notice that accompanied the agency’s previous determination to grant the initial two-year exemption on behalf of the 6 applicants. No mention is made of driving mileage accrued during the two years of the prior exemption nor any information regarding the accident and citation experience of the applicants. Nowhere does the agency state that the drivers were involved in accidents or received citations for moving violations. Even if these events do not disqualify the drivers from consideration of a renewal of their exemption, the agency should provide the public with the same record and information it reviewed in coming to its decision that the exemption of each driver should be renewed.

FMCSA’s reliance on the term “renewal” is without legal import since the statute does not use that term nor does it define an exemption renewal as permitting a different process from any other application for a two-year exemption. A request for a “renewal” is simply an application for a two-year exemption and the same process obtains for a second or subsequent exemption request under 31315(4)(A) as for the first such application.

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